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SENATE BILL 126

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

John Pinto

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO THE TAXATION; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO IDENTIFY AND NOTIFY CERTAIN TAXPAYERS OF POSSIBLE OVERPAYMENT OF TAXES; EXTENDING THE TIME FOR REFUND CLAIMS WITH RESPECT TO CERTAIN MILITARY INCOME OF NATIVE AMERICANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] REVIEW OF RECORDS--NOTICE OF POTENTIAL ELIGIBILITY FOR REFUND.--

A. The department shall review income tax records to identify possible overpayments of tax that have been made with respect to income earned from service in the armed forces of the United States by a taxpayer who is:

- (1) a resident of New Mexico;

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1 (2) an enrolled member of a federally
2 recognized Indian nation, tribe or pueblo; and

3 (3) whose domicile during that service was on
4 the member's or the member's spouse's reservation or pueblo
5 grant or within the boundaries of lands held in trust by the
6 United States for the benefit of the member, the member's
7 spouse or the member's or the spouse's Indian nation, tribe or
8 pueblo, subject to restrictions against alienation imposed by
9 the United States.

10 B. The department shall send a notice detailing the
11 possible overpayments to the identified taxpayers, pursuant to
12 the provisions of Section 7-1-9 NMSA 1978."

13 Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. CLAIM FOR REFUND.--

16 A. ~~[Any]~~ A person who believes that an amount of
17 tax has been paid by or withheld from that person in excess of
18 that for which the person was liable, who has been denied ~~[any]~~
19 a credit or rebate claimed or who claims a prior right to
20 property in the possession of the department pursuant to a levy
21 made under authority of Sections 7-1-31 through 7-1-34 NMSA
22 1978 may claim a refund by directing to the secretary, within
23 the time limited by the provisions of Subsections D, E ~~[and]~~, F
24 and K of this section, a written claim for refund. Except as
25 provided in Subsection J of this section, a refund claim shall

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1 include the taxpayer's name, address and identification number,
2 the type of tax for which a refund is being claimed, the sum of
3 money being claimed, the period for which overpayment was made
4 and the basis for the refund. As used in this subsection,
5 "basis for the refund" means a brief statement of the facts and
6 the law on which the claim is based.

7 B. The secretary or the secretary's delegate may
8 allow the claim in whole or in part or may deny the claim.

9 (1) If the claim is denied in whole or in part
10 in writing, no claim may be refiled with respect to that which
11 was denied but the person, within ninety days after either the
12 mailing or delivery of the denial of all or any part of the
13 claim, may elect to pursue one, but not more than one, of the
14 remedies in Subsection C of this section.

15 (2) If the department has neither granted nor
16 denied ~~[any]~~ a portion of a claim for refund within one hundred
17 twenty days of the date the claim was mailed or delivered to
18 the department, the person may refile it within the time limits
19 set forth in Subsection D of this section or may within ninety
20 days elect to pursue one, but only one, of the remedies in
21 Subsection C of this section. After the expiration of the two
22 hundred ten days from the date the claim was mailed or
23 delivered to the department, the department ~~[may]~~ shall not
24 approve or disapprove the claim unless the person has pursued
25 one of the remedies under Subsection C of this section.

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1 C. A person may elect to pursue one, but only one,
2 of the remedies in Paragraphs (1) and (2) of this subsection.
3 In any case, if a person does timely pursue more than one
4 remedy, the person shall be deemed to have elected the first
5 remedy invoked. The remedies are as follows:

6 (1) the person may direct to the secretary a
7 written protest against the denial of, or failure [~~to~~] either
8 to allow or deny the claim or portion thereof, which shall be
9 set for hearing by a hearing officer designated by the
10 secretary promptly after the receipt of the protest in
11 accordance with the provisions of Section 7-1-24 NMSA 1978, and
12 pursue the remedies of appeal from decisions adverse to the
13 protestant as provided in Section 7-1-25 NMSA 1978; or

14 (2) the person may commence a civil action in
15 the district court for Santa Fe county by filing a complaint
16 setting forth the circumstance of the claimed overpayment,
17 alleging that on account thereof the state is indebted to the
18 plaintiff in the amount stated, together with any interest
19 allowable, demanding the refund to the plaintiff of that amount
20 and reciting the facts of the claim for refund. The plaintiff
21 or the secretary may appeal from any final decision or order of
22 the district court to the court of appeals.

23 D. Except as otherwise provided in Subsections E,
24 [~~and~~] F and K of this section, no credit or refund of any
25 amount [~~may~~] shall be allowed or made to [~~any~~] a person unless

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1 as the result of a claim made by that person as provided in
2 this section:

3 (1) within three years of the end of the
4 calendar year in which:

5 (a) the payment was originally due or
6 the overpayment resulted from an assessment by the department
7 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

8 (b) the final determination of value
9 occurs with respect to any overpayment that resulted from a
10 disapproval by any agency of the United States or the state of
11 New Mexico or any court of increase in value of a product
12 subject to taxation under the Oil and Gas Severance Tax Act,
13 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
14 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
15 or the Natural Gas Processors Tax Act; or

16 (c) property was levied upon pursuant to
17 the provisions of the Tax Administration Act;

18 (2) when an amount of a claim for credit under
19 the provisions of the Investment Credit Act, Laboratory
20 Partnership with Small Business Tax Credit Act or Technology
21 Jobs Tax Credit Act or for the rural job tax credit pursuant to
22 Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has been
23 denied, the taxpayer may claim a refund of the credit no later
24 than one year after the date of the denial;

25 (3) when a taxpayer under audit by the

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1 department has signed a waiver of the limitation on assessments
2 on or after July 1, 1993 pursuant to Subsection F of Section
3 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of
4 the same tax paid for the same period for which the waiver was
5 given, until a date one year after the later of the date of the
6 mailing of an assessment issued pursuant to the audit, the date
7 of the mailing of final audit findings to the taxpayer or the
8 date a proceeding is begun in court by the department with
9 respect to the same tax and the same period;

10 (4) if the payment of an amount of tax was not
11 made within three years of the end of the calendar year in
12 which the original due date of the tax or date of the
13 assessment of the department occurred, a claim for refund of
14 that amount of tax ~~can~~ may be made within one year of the
15 date on which the tax was paid; or

16 (5) when a taxpayer has been assessed a tax on
17 or after July 1, 1993 under Subsection B, C or D of Section
18 7-1-18 NMSA 1978 and when the assessment applies to a period
19 ending at least three years prior to the beginning of the year
20 in which the assessment was made, the taxpayer may claim a
21 refund for the same tax for the period of the assessment or for
22 any period following that period within one year of the date of
23 the assessment unless a longer period for claiming a refund is
24 provided in this section.

25 E. No credit or refund shall be allowed or made to

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1 [any] a person claiming a refund of gasoline tax under Section
2 7-13-11 NMSA 1978 unless notice of the destruction of the
3 gasoline was given the department within thirty days of the
4 actual destruction and the claim for refund is made within six
5 months of the date of destruction. No credit or refund shall
6 be allowed or made to [any] a person claiming a refund of
7 gasoline tax under Section 7-13-17 NMSA 1978 unless the refund
8 is claimed within six months of the date of purchase of the
9 gasoline and the gasoline has been used at the time the claim
10 for refund is made.

11 F. If, as a result of an audit by the internal
12 revenue service or the filing of an amended federal return
13 changing a prior election or making any other change for which
14 federal approval is required by the Internal Revenue Code, any
15 adjustment of federal tax is made with the result that there
16 would have been an overpayment of tax if the adjustment to
17 federal tax had been applied to the taxable period to which it
18 relates, claim for credit or refund of only that amount based
19 on the adjustment may be made as provided in this section
20 within one year of the date of the internal revenue service
21 audit adjustment or payment of the federal refund or within the
22 period limited by Subsection D of this section, whichever
23 expires later. Interest computed at the rate specified in
24 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
25 any such claim for refund from the date one hundred twenty days

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1 after the claim is made until the date the final decision to
2 grant the credit or refund is made.

3 G. If as a result of an audit by the department or
4 a managed audit covering multiple periods an overpayment of tax
5 is found in any period under the audit, that overpayment may be
6 credited against an underpayment of the same tax found in
7 another period under audit pursuant to Section 7-1-29 NMSA
8 1978, provided that the taxpayer files a claim for refund for
9 the overpayments identified in the audit.

10 H. Any refund of tax paid under any tax or tax act
11 administered under Subsection B of Section 7-1-2 NMSA 1978 may
12 be made, at the discretion of the department, in the form of
13 credit against future tax payments if future tax liabilities in
14 an amount at least equal to the credit amount reasonably may be
15 expected to become due.

16 I. For the purposes of this section, the term "oil
17 and gas tax return" means a return reporting tax due with
18 respect to oil, natural gas, liquid hydrocarbons, carbon
19 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and
20 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
21 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
22 Valorem Production Tax Act, the Natural Gas Processors Tax Act
23 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

24 J. The filing of a fully completed original income
25 tax return, corporate income tax return, corporate income and

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1 franchise tax return, estate tax return or special fuel excise
2 tax return that shows a balance due the taxpayer or a fully
3 completed amended income tax return, an amended corporate
4 income tax return, an amended corporate income and franchise
5 tax return, an amended estate tax return, an amended special
6 fuel excise tax return or an amended oil and gas tax return
7 that shows a lesser tax liability than the original return
8 constitutes the filing of a claim for refund for the difference
9 in tax due shown on the original and amended returns.

10 K. A claim for a refund may be made until December
11 31, 2017 if:

12 (1) the claim for a refund is for an amount
13 paid by the taxpayer or withheld from the taxpayer's earnings
14 with respect to income earned from service in the armed forces
15 of the United States; and

16 (2) the basis of the refund claim is that the
17 income was not subject to taxation by New Mexico because:

18 (a) the taxpayer was an enrolled member
19 of a federally recognized Indian nation, tribe or pueblo; and

20 (b) the taxpayer's domicile in New
21 Mexico during that service was: 1) on the member's or the
22 member's spouse's reservation or pueblo grant; or 2) within the
23 boundaries of lands held in trust for the benefit of the member
24 or the member's spouse or the member's or spouse's Indian
25 nation, tribe or pueblo, which lands was subject to

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restrictions against alienation imposed by the United States."

- 10 -